IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Oriental Insurance Co. Ltd. Vs. Smt. Rama Gupta & Ors

S.B. CIVIL MISC. APPEAL No.1916/2005 against the judgment & award dated dated 30.4.2005 passed by the Judge, MACT, Kishangarhbas, District Alwar in Case No.178/2000.

Date of Judgment :: Friday, June 02, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mrs. Archna Mantri for the appellant.
Mr. R.K. Agrawal for the respondents.

BY THE COURT:

1. This appeal of the Insurance company is directed against the award of MACT, Kishangarhbas dated 30.4.2005 while deciding the claim case No.178/2000 in a road accident which took place on 24.10.2000 at 9.00 AM.

2. The deceased Vijay Kumar Gupta while going on a motorcycle from Jaipur to Pratap Nagar, Sanganer near Jaipur was hit from back side by a half body truck No.RSM 325 which was being driven in a rash and negligent manner by the respondent No.1 Jagdish Prasad and as a result of the said accident the deceased Vijay Kumar Gupta, 36 years of age, lost his life. He was working as a lecturer in Government Senior Secondary School and was drawing a monthly salary Rs.10,725/-.

3. He left behind his widow and two young sons aged 5 years and 4 years respectively and old aged mother and father.

4. The claim filed before the Tribunal was to the extent of Rs.65,74,500/-. The Tribunal after arriving at a finding of rash and negligent driving in favour of the claimants proceeded to compute the compensation in favour of the claimants and taking into account future prospect of rise in the income of the said government servant the Tribunal doubled the monthly income of Rs.10,725/- as aforesaid following the decision of Hon'ble Supreme Court in **General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas (Mrs.) & others** [(1994) 2 SCC 176]case and after making deduction 1/3rd towards personal expenditure the Tribunal computed the compensation towards loss of dependency at Rs.26,49,600/- (13,800x12x16) by applying the multiplier of 16. It may be stated here that multiplier of 16 to prescribe for the age between 35 to 40 years in the Second Schedule to the M.V. Act, 1988.

5. Learned counsel appearing for the Insurance company mainly relying on the judgment of Hon'ble Supreme Court in **T.N. State Transport Corporation Ltd. Vs. S. Rajapriya & Ors.**[2005) 6 SCC 236] submitted that the multiplier of

12 should have been adopted by the Tribunal and not 16 where the income is doubled in view of the ratio of Hon'ble Supreme Court in Susamma Thomas case and, therefore, the compensation awarded by the Tribunal deserves to be reduced. Learned counsel has also relied upon the judgment of this Court in National Insurance Company Ltd Vs. Smt. Vinod Choudhary & Ors. [CMA Appeal No.1316/2005] decided on 26.9.2005 in which this Court observed that where the multiplier as per second schedule is employed, then the income of the deceased at the time of death only is to be taken, and no increase can be made on the consideration of future prospects of increase. In that case taking the yearly income at Rs.60,000/- and making deduction of 1/3rd the multiplier of 17 was employed by the court in view of the age of the deceased and the total compensation of Rs.6,80,000/- was awarded by this Court instead of Rs.10,20,000/- awarded by the Tribunal. Learned counsel has also relied upon the case of **Sarla Dixit & anr. Vs. Balwant Yadav & ors.** [(2004) ACC 396(SC)] and **Bijoy Kumar Dugar Vs. Bidyadhar Dutta & ors.** [2006(2) Supreme 374]in support of her submissions.

6. Opposing these submissions Mr. R.K. Agrawal learned counsel appearing the the claimants vehemently submitted that the compensation awarded by the Tribunal is just and fair and does not call for any interference in the present appeal. He submitted that in view of sharply

falling rates of interest on bank deposits in Indian economy these days for the last 2-3 years, the compensation awarded by the Tribunal is just and fair and if the entire money is deposited in fixed deposit, the monthly interest would be nothing more than what has been taken as average monthly income of the deceased. Therefore, he justified not only the doubling of the income in view of judgment of Hon'ble Supreme Court in Susamma Thomas case but also justified the adoption of multiplier of 16. He placed reliance of Division Bench judgment of this Court in **Smt. Kalli @ Kalyani & ors. Vs. Indra Raj Bairwa & ors**. [2004 WLC 789] in which case on account of death of a 28 years old person having monthly income of Rs.3,765/- the Court taking into account the future prospects of increase in income adopted the monthly income at Rs.7,530/- and after making deduction of 1/3rd towards personal expenses enhanced the compensation of Rs.6,43,680/- awarded by the Tribunal to Rs.10,84,320/-.

7. In the facts of the present case having heard the learned counsel and after perusal of the cited judgments, this Court is of the opinion that the present appeal of the Insurance company is devoid of merit and the same deserves to be dismissed. The doubling of average monthly income in view of the ratio of the Hon'ble Supreme Court in Susamma Thomas where in the present case the deceased

was a government servant having fixed monthly income and died at a comparative young age of 36 cannot be said to be excessive estimation of monthly income. The salaries of government servants have not only increased substantially on account of recommendation of 5th Pay Commission but on account of the increase in dearness allowances etc. Therefore, such an average increase cannot be ruled out. Equally true is the justification of adoption of multiplier of 16 because of sharply falling rates of interest in Indian economy of which a judicial cognizance can be taken by this Court. The Tribunals and this Court has also reduced the rates of interest to 7.5% on compensation awarded in various cases. The list of dependents comprising of two old aged parents, a young widow and two minor children also cannot be lost sight of while deciding the compensation which undoubtedly has to be just and fair. The said young person has lost his life not far ago in past. The death in question on 24.10.2000 and thereafter constantly decreasing rates of interest impels this Court to hold that the compensation awarded by the Tribunal is just and fair and does not call for any interference by this Court.

8. In para 12 in the judgment cited by learned counsel for the Insurance company in S. Rajapriya case, the Hon'ble Supreme Court has categorically held that the multiplier method involves the ascertainment of the loss

of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last. In para 16 of the said judgment the Hon'ble Supreme Court in view of the declining rates of interest also held that as the interest rate is on decline, therefore, the multiplier has to consequentially be raised and, therefore, the multiplier of 18 instead of 16 was adopted by Supreme Court in Trilok Chandra case. Though in S. Rajapriya's case court ultimately adopted the multiplier of 12 only in the facts and circumstances of the case.

9. Therefore, this Court finds no force in the present appeal of the Insurance company and the same is dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

VS/